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**IN THE
COURT OF APPEALS OF INDIANA**

MYRON HAMILTON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A04-0610-CR-560

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Israel Cruz, Judge
Cause No. 49G20-0502-FA-15501

May 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Myron Hamilton appeals his conviction for Class A felony dealing in cocaine, Class C felony possession of cocaine, Class C felony possession of cocaine and a firearm, Class B felony unlawful possession of a firearm by a serious violent felon, and Class C felony carrying a handgun without a license after having previously been convicted of a felony. We affirm.

Issues

Hamilton raises two issues on review:

- I. whether the police had probable cause to obtain a search warrant for his apartment; and
- II. whether there was sufficient evidence to convict him of dealing cocaine.

Facts

On January 31, 2005, three officers from the Indianapolis Police Department, accompanied by a canine trained by the department, were serving domestic battery arrest warrants. The officers had an arrest warrant for Hamilton. A woman answered the door at the address listed on the warrant, and she indicated that Hamilton no longer lived there. She gave the officers Hamilton's current address. The officers proceeded to the address that the woman had given them, and they observed Hamilton leaving his apartment carrying a backpack. The officers called out Hamilton's name and ordered him to stop. Hamilton did not immediately stop, and one of the officers released the police dog. Hamilton saw the dog and laid down on the ground, setting the backpack next to him.

One of the officers moved the backpack away from Hamilton, which caused a handgun to fall out of it.

The officers placed Hamilton in handcuffs and began to escort him to the parking lot. One of the officers noticed that Hamilton's hands were inside the waistband of his pants. The officer forcibly removed Hamilton's hands from his pants, and Hamilton tossed a clear plastic baggie on the ground. The baggie contained three smaller baggies that appeared to contain various forms of cocaine. Tests later confirmed that the baggies contained 26.9 grams of cocaine. The officers also found \$1,978 in Hamilton's front pocket. Later that day, while Hamilton was being processed, an additional 2.25 grams of cocaine was discovered in his back pocket.

The officers contacted the Metropolitan Drug Task Force, and Sergeant Eric LeDoux responded to the scene. Sergeant LeDoux questioned Hamilton and then prepared a probable cause affidavit for a search warrant for Hamilton's apartment, which was granted. Inside Hamilton's apartment, the officers found a digital scale with cocaine residue, baggies with the corners removed, a spoon with cocaine residue, and Inositol powder, which is a food supplement that is commonly used by cocaine dealers to increase the amount of the product.

At a bench trial, the evidence seized from Hamilton's person, backpack, and apartment were admitted without objection. The trial court found Hamilton guilty on all counts and sentenced him to thirty years imprisonment. Hamilton now appeals.

Analysis

I. Search and Seizure

Hamilton argues that the officers lacked probable cause to obtain a search warrant for his apartment and, therefore, the search was an unreasonable search and seizure under the Fourth Amendment to the United States Constitution. Hamilton also asserts that the error was fundamental, and, therefore, we should consider his claim despite counsel's failure to object to admission of the evidence. Without deciding whether these circumstances constitute fundamental error, we will review Hamilton's claim.

To be valid, a probable cause affidavit and the resulting warrant must comply with the Fourth Amendment prohibition on unreasonable searches and seizures. Gray v. State, 758 N.E.2d 519, 521 (Ind. 2001). The Fourth Amendment requires that the issuing magistrate review the probable cause affidavit and "make a practical, commonsense decision whether, given all the circumstances set forth before him . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." Id. (citing Illinois v. Gates, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)).

In reviewing the magistrate's decision, we consider whether a "substantial basis" existed for a warrant authorizing the search or seizure, resolving doubtful cases in favor of upholding the warrant. Id. In determining whether a substantial basis exists, we "focus on whether reasonable inferences drawn from the totality of the evidence support the determination" and give deference to the magistrate's decision. Houser v. State, 678 N.E.2d 95, 99 (Ind.1997).

Hamilton's specific objection is that the search warrant was based in part upon a conclusory statement in the first sentence of the affidavit: "Cocaine the possession of which is illegal is being kept and stored at [Hamilton's address]." Br. p. 11. Affidavits that merely state the affiant's conclusions are insufficient to establish probable cause. McGowan v. State, 599 N.E.2d 589, 593 (Ind. 1992). "However, an affidavit is sufficient for the issuance of an arrest warrant when it is supported by enough underlying facts to allow a judicial officer to make an independent determination as to probable cause." Id.

The affidavit used by the magistrate to issue a search warrant for Hamilton's apartment contained much more than this one conclusory statement. First, Sergeant LeDoux relayed the information surrounding the discovery of the baggies filled with white powder that Hamilton retrieved from his pants and threw on the ground. Next, he attested that he believed the white powder was cocaine, due to his training and experience. Third, he stated that the powder was packaged in such a way as to appear to be packaged for sale. Finally, he stated that in his experience, individuals who sell cocaine keep it in their residences.

We conclude that these statements provided probable cause to issue a search warrant for Hamilton's apartment. In Love v. State, 842 N.E.2d 420, 426 (Ind. Ct. App. 2006), we held that a substantial basis existed to conclude that there was probable cause to support a search warrant of the defendant's residence where officers found evidence of cocaine in the trash outside the defendant's house. We stated that "[g]iven the presence of cocaine, and the fact that the possession of cocaine itself is a crime, we conclude that the warrant was based upon probable cause, and the evidence discovered during the

execution of the warrant was admissible.” Love, 842 N.E.2d at 426. Similarly, Hamilton was in possession of cocaine as he was leaving his apartment. We conclude that the possession of cocaine shortly after leaving a residence provides a substantial basis for the magistrate to believe that evidence of a crime was present within the apartment.

Sergeant LeDoux’s identification of the cocaine for purposes of the affidavit was based upon his training and experience rather than on a test of the substance. However, we have held that probable cause existed when a trained and experienced police officer detected the odor of burnt marijuana coming from a vehicle, see Hawkins v. State, 766 N.E.2d 749, 752 (Ind. Ct. App. 2002) and where a trained and experienced police officer could recognize marijuana stems and seeds, see Edwards v. State, 832 N.E.2d 1072, 1080 (Ind. Ct. App. 2005). We conclude it was appropriate for the magistrate to make a probable cause determination based upon LeDoux’s identification of the substance as cocaine, and Hamilton fails to argue otherwise.

We conclude that the reasonable inferences drawn from the totality of the evidence support the determination of probable cause because Hamilton possessed baggies of a white powdery substance as he was leaving his residence, the officer recognized the substance to be cocaine, the cocaine was packaged in a way that led the officer to believe it was for sale, and Hamilton had a large amount of cash and a gun on his person. The search warrant was properly issued. There was no error, fundamental or otherwise, in the admission of this evidence.

II. Sufficiency of the Evidence

Hamilton also challenges the sufficiency of the evidence used to convict him of dealing in cocaine. When reviewing a claim of insufficient evidence, we neither reweigh the evidence nor judge the credibility of witnesses. Trimble v. State, 848 N.E.2d 278, 279 (Ind. 2006). We will affirm if the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Williams v. State, 834 N.E.2d 225, 229 (Ind. Ct. App. 2005).

In order to convict Hamilton of dealing in cocaine, the State had to prove that he had possession of cocaine and the intent to manufacture it, finance the manufacture of it, deliver it, or finance the delivery of it. See Ind. Code § 35-48-4-1(a)(2). Hamilton does not argue that he did not possess cocaine; rather, he asserts that neither the evidence nor the officers' testimonies demonstrated that he had the intent to deliver cocaine.

Circumstantial evidence showing possession with intent to deliver may support a conviction for dealing in a controlled substance. Hershey v. State, 852 N.E.2d 1008, 1015 (Ind. Ct. App. 2006), trans. denied. Possessing a large amount of a narcotic substance is circumstantial evidence of intent to deliver. Id. In Davis v. State, 791 N.E.2d 266, 270 (Ind. Ct. App. 2003), trans. denied, we held that the evidence was sufficient to uphold a conviction for dealing in cocaine where the defendant had possession of five grams of cocaine that was individually wrapped. In Dandridge v. State, 810 N.E.2d 746, 750 (Ind. Ct. App. 2004), trans. denied, we held that the defendant's possession of \$300 in cash and ten grams of cocaine split among eight baggies was sufficient to uphold his conviction for dealing in cocaine.

At the time of his arrest, Hamilton had in his possession approximately twenty-nine grams of cocaine contained in four baggies, \$1,978 in cash, and a gun. One of the officers present at the scene testified that one of the baggies contained a large chunk of cocaine that appeared to be cut from a brick, which dealers generally use to break down into smaller quantities for sale. He also testified that another baggie contained rock cocaine, and a third baggie contained cocaine in its powder form.

Other circumstantial evidence demonstrating Hamilton's intent to deal in cocaine includes those items seized from his apartment: a digital scale with cocaine residue, baggies with the corners removed, and Inositol powder. Sergeant LeDoux testified that it was common for drug dealers to hold their product in plastic baggies with removed corners. He also explained cocaine dealers use Inositol as a cutting agent. He testified that it is typically added to cocaine, thereby increasing the amount of the product that can be sold while decreasing the quality of the cocaine. We conclude that the evidence is certainly sufficient for the trier of fact to have found that Hamilton possessed cocaine with the intent to deliver it.

Conclusion

Hamilton's Fourth Amendment rights were not violated because there was probable cause to issue a search warrant for his apartment. The State presented sufficient evidence to prove that Hamilton possessed cocaine with the intent to deliver it. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.